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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

November 14,2002

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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12" Street S.W., TW-A325
Washington, DC 20554

RE: CC D ket N 01-338.96-98 a d 147 In M o R c t Section 251 U g ti Inc t Local Exchange Carriers; p ti f t I l Competition o of Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications C bili

Dear Ms. Dortch:

Yesterday, Cronan O'Connell, Mary Retka, Molly Martin and Craig Brown of Qwest Communications International Inc., met with Christopher Libertelli, legal advisor to Chairman Michael Powell of the Federal Communications Commission. The material in the attached presentation concerning Triennial Review issues was reviewed. In particular, Qwest discussed its UNE-P Transition Plan, reviewed its Hot Cut Process, and discussed alternative options for local usage and commingling restrictions. Also discussed were general legal and policy issues including state preemption, necessary steps to avoid delays in implementation, and treatment of "de-Listed" UNEs.

In accordance with Section 1.1206(b)(2) of the FCC's Rules, an original and six copies (two for each proceeding) of this letter are being filed with your office for inclusion in the public record.

Acknowledgment and date of receipt of this submission are requested. A duplicate of this letter is provided for this purpose. Please call if you have any questions.

Sincerely,

Cronan O'Connell

cc: Christopher Libertelli (via e-mail at cliberti@fcc.gov with attachment)

Attachment

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Triennial Review
November 13, 2002

Key Points

- Unbundled Switching
  - Hot Cut Process
  - UNE-P Transition Proposal
- Transport
  - Local Usage and Commingling Restrictions
- Advanced Services
  - CLEC Access to DLC Loops
- General Issues
  - Preemption of States
  - Necessary Steps to Avoid Delays in Implementation
  - Treatment of "De-Listed" Network Elements Offered Under Section 271

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Unbundled Switching – Key *Points*

- CLECs are not impaired without access to Switching as an Unbundled Network Element
- The FCC has authority to mandate nationwide removal of Local Switching from the Unbundled Network Element list
  - Unbundled switching is not necessary as a means to acquire customers -- even for a limited time period
- An Order should clearly define the end date for Unbundled Local Switching as a UNE

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Qwest Hot Cut Process is Sufficient to Meet Anticipated Demand

- Qwest CLEC Coordination Center (QCCC) currently staffed to handle 1,500 UNE-L cutovers per day
- Qwest Hot Cut results today am excellent
  - 99.43% of Analog Coordinated Cuts Completed on Time
  - 98.19% of Digital Coordinated Cuts Completed on Time
- Standard Provisioning Intervals

Loop Type		1-8 loops	9-16 loops	17-24 loop	25+ loops
Analog/Voice Grade Loops	Standard Analog Loops	5 days	6 days	7 days	ICB
	Quick Loop Analog-Conversion	3 days	3 days	3 days	ICB

Qwest provides a 3-day installation option, called Quick Loop, for conversion of in-place analog loops that do not require coordinated installation or cooperative testing. Quick Loop is not available for loops served over IDLC technology. Quick Loop is also offered for loops with number portability. The installation intervals for Quick Loop with LNP arc 3 days for 1 to 8 loops, 4 days for 9 to 24 hops, and ICB for 25 or more loops.

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Qwest UNE-P Transition Proposal

- Unbundled Switching removed from UNE list
- UNE-P no longer available to serve new customers
  - CLECs may order either Resale or Unbundled Loops subject to the terms of their individual Interconnection Agreements
  - The parties will begin negotiations of an amendment to their existing Interconnection Agreements, if necessary, to reflect the removal of Unbundled Switching from the list of required unbundled network elements
  - Existing UNE-P lines will be "grandfathered" at UNE rates until completion of a transition for these lines
  - Qwest estimates that *it* will *take* 7 months to provision all anticipated requests for conversion
- Within 30 days of the date of the FCC Order, Qwest will notify all CLECs via registered letter of their transition options from UNE-P
  - The schedule will identify, by wire center, all planned transition dates and ordering deadlines

Unbundled Transport - Key Points

- *There is no basis to find that competing carriers are impaired without access to Unbundled Transport at TELRIC rates*
- *The FCC Should Remove Dedicated Interoffice Transport from th UNE List in Areas Where It Has Granted Phase I Pricing Flexibility*
- *FCC findings demonstrate that there are substantial competitive alternatives to Special Access in those areas where they have granted Pricing Flexibility*
- *Special Access, which is constrained in price, is also a substitute for Unbundled Transport (in addition to alternative providers)*

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Competitive Trigger "Alternatives" on the Record To Date

Alternatives	Triggers	Implementation Process
1. Qwest Pricing Flexibility Test (Verizon similar for DS1s)	- collocation in 15% of WCs; or in WCs accounting for 30% revenue	- Easily administered by FCC - Process already in place
2. BS/TWTC	- 3 ≥ competitive transports providers in either A or Z WC	- Would require add'l administrative processes by FCC not in place today
3. SBC	- Remove DS3 and above - Remove dark fiber - 2 ≥ competitor transport providers in WC; or - WC has 15,000 or more business lines; or - WC generates $150,000 special access/month	- Would require add'l administrative processes by FCC not in place today

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Competitive Trigger "Alternatives" on the Record To Date (cont.)

Alternatives	Triggers	Implementation Process
4. ATT	- 4 to 5 competitive providers "self-provisioned" at both the WC and end point - Financially stable - Have sufficient capacity to meet "projected" needs of all CLECs on specific routes - CLECs not required to build "patchwork" networks - Multi-vendor testing - Cross-connects	- Would Defer to state regulators for final determination and if approved, implementation - Many opportunities for gaming and delay
5. WCOM	- 4 ≥ competitive providers at both WC and end point	- Beyond requirements of "necessary and impair" test
6. ALTS / Comptel	- 4 ≥ competitive providers at both WC and end point - Financially solvent - Use by CLEC is economically viable and technologically reliable - Have adequate capacity to serve existing and foreseeable demand for routes - Cross-connects - Multi-vendor testing - Requires state regulatory determination	- Extremely complex and subjective, likely resulting in inconsistent results

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Other Regulatory Matters -- EELs

- Today, Qwest's EEL offerings allow viable facilities-based local competition

- Should the Commission, however, determine that the current use restrictions need to be reviewed, Qwest proposes workable alternatives that:
  - Promote facilities-based local competition
  - Strike a competitive balance for both ILECs and CLECs

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Local Use Restriction Alternatives

Alternatives:

#1: CLEC self-certifies that its loops and transport carry at least 51% "local" traffic; and/or

#2: Local telephone numbers associated with the EEL circuit must be provided to ILEC at time of ordering; and/or

#3: CLEC must have local interconnection service (LIS) trunks in place and Percent Local Usage (PLUs) on file associated with the EEL collocation termination point

Comments:

- CLECs converting from UNE-P to EEL will automatically be presumed to meet the "local" standard, with a follow-up certification by the CLEC to be provided no later than six months after the conversion
- Applies to all circuits the CLEC wishes to convert to EELs
- As is the case today, Internet access will not satisfy the "local" traffic criterion
- Audit provisions would apply

- Audit provisions would apply
- Would require CLEC to designate the "26 code" and the CLLI code for the point of interconnection (POI) for the LIS trunk(s)

- Audit provisions would apply

NOTE: Further investigation of alternatives required. Appropriate solution could be a combination of alternatives

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Local Use Restriction Audit Provisions

- As a condition of the purchase of or conversion to EELs, the CLEC [redacted]st agree to provide traffic billing records to a third party auditor to be identified by the ILEC for review of compliance with the local use certification.
  - The ILEC may initiate an audit by an independent third party to assure compliance with the local use restriction no earlier than 6 months, after this provisioned.
  - Every 6 months, the CLEC must be prepared to provide to third party auditor, if requested, one month's CDR upon 7 day's notice. The audit will include verification that the traffic carried over the facility or facilities in question meets the local usage restriction.
  - The data required for an audit would be the call detail records (CDR) in the AMA format from the CLEC local voice switch.
- If the CLEC is found to be in violation of the local use restriction, the CLEC will pay: 1) all costs for the auditor and the ILEC personnel involved in the audit, 2) corrected billing back to date the circuit was established, 3) interest (penalty) on the amount of corrected billing, and 4) loss of commingling rights after three faulted audits

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Commingling Discussion

- Commingling is defined as the combination of EEL Loops and Private Line/Special Access channel termination circuits onto the same Multiplexed Interoffice Transport Facility.

- At a minimum, any alterations of existing commingling restrictions must be conditioned on the following:
  - *The UNE loop portion of EELs provisioned on the Interoffice Facility (IOF)* must *satisfy specified local* use *restriction to qualify*
  - The co-mingled Interoffice facility must terminate in a CLEC collocation (one collocation required per LATA)
  - DS3 UNE loops cannot be commingled with other traffic on an OCn Interoffice Facility
  - Using existing Special Access pricing zones, commingling of DS1 UNE Loops onto a mixed-use DS3 IOF would be allowed in Zones 2 & 3 only

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The FCC *Should* Not *Require Further Unbundling of* Advanced Services

- CLECs are not impaired without Access to Advanced Services facilities.
- ILECs have no scale advantages in the market for Advanced Services - intermodal competition is thriving.
- So far, efforts to unbundle Advanced Services (Line Sharing, Remote Collocation) have failed.
- Public Policy Concerns - continued unbundling will deter Facilities-based Competition and delay the economic benefits of nationwide Broadband Deployment.

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How Does a CLEC *Access* the Unbundled Loop When There is Fiber In the Feeder and the Loop is Integrated into the Switch?

Options

- First option: via an available copper loop if one exists

- Second option: If copper not available and if UDLC is available, provide UBL over UDLC and present at the ICDF

- Third option: If neither copper loop or UDLC is available then the "Hairpin" option is the means to provide the UBL

  Hairpin: A semi-permanent path through a Switching Module (SM) between two (2) ports on the same peripheral equipment, such as an Integrated Digital Carrier Unit (IDCU). The SM's Time Slot Interchange (TSI) is bypassed and not used. Normal switch call-processing functions are not used. This is a last resort solution to provisioning an Unbundled Loop (UBL) over Integrated Digital Loop Carrier (IDLC).

Capabilities

- CLEC can access copper loop at central office - DSL capable (distance limitations may apply)

- CLEC can access copper loop at the remote terminal to provide ADSL

- CLEC can access access loop at central office -- not DSL capable at the central office

- CLEC can access copper loop at the remote terminal to provide ADSL

- CLEC can access access loop at central office -- not DSL capable at the central office

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The Commission Must Preempt Inconsistent State Actions

- As a matter of law, the Commission may not permit states to override its unbundling determinations
  - Section 251(d)(2) requires the Commission to strike a national policy balance in light of the benefits and costs of unbundling
  - Once the Commission strikes that balance, a deviation in either direction would be inconsistent with federal law; in other words, the Commission's unbundling decisions create both a "floor" and a "ceiling"
- As a matter of policy, the Commission should not permit states to override its unbundling determinations
  - Alternative would result in patchwork of unbundling rules, governed by state policy differences, protracted litigation, and uncertainty

The Commission Must Preempt Inconsistent State Actions (cont'd)

- Preemptive unbundling policy would be natural extension o *UNE Remand Order*, in light of *USTA* decision
- The Commission's adoption of guidelines or presumptive determinations, with ultimate determinations by the states, would be tantamount to complete delegation
- Delegation to states is not nec esary to make "granular" unbundling decisions
- Commission must guard against re-regulation of UNEs through section 271

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The Commission Must Take Certain Steps to Avoid Frustration of Its Objectives

- Qwest has encountered significant problems and delays in implementing the Commission's *ISP Reciprocal Compensation Order*; in many cases, CLECs simply ignored the Order
- Such delays frustrate the Commission's policies and can be avoided with certain narrow prescriptions

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Steps to Avoid Delay

- Confirm that obligation to negotiate in good faith applies to both ILECs and CLECs
- Make clear that it will permit, and expect, carriers to begin negotiations immediately, regardless of change of law provision, generally without need for arbitration
- Establish transition period that runs concurrently with change of law process
- Bar CLECs from opting into contracts to perpetuate unbundled access to elements removed from the UNE list

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Existing Change of Law Provisions may Cause Delays in Themselves

- "In the event that any final and nonappealable **legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, . . . the CLEC or the ILEC may, on 30 days written notice** (delivered not later than 30 days following the date on which such action has become legally binding and has otherwise become final and nonappealable) **require that such terms be renegotiated, and the parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within 90 days after such notice, the Dispute shall be referred to the Dispute Resolution procedures [of the agreement]."(emphasis supplied)**

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Treatment of "De-listed" Network Elements Offered Under Section 271

- Subject only to Commission's general pricing authority under sections 201 and 202 (*UNE Remand Order* ¶ 473), with no role for state review
- Likewise, the terms and conditions for elements provided under section 271 are governed only by the general requirements of sections 201 and 202, and not section 251 (*UNE Remand Order* ¶¶ 470, 473)
- Finding of "no impairment" would satisfy the requirements for non-dominance regarding the offering of that element under section 271
- The offering of an element pursuant to section 271 need not be included in a section 251 interconnection agreement.
- <u>Note</u>: Grant of Verizon's petition for forbearance would eliminate requirement to provide element under section 271

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